



February 12, 2001

Ms. J. Middlebrooks
Assistant City Attorney
City of Dallas
2014 Main, Room 501
Dallas, Texas 75201-5203

OR2001-0519

Dear Ms. Middlebrooks:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 144161.

The City of Dallas Police Department (the “department”) received a request for the Internal Affairs Personnel Complaint Control Sheet for 1,900 internal affairs investigations. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Subsections 552.301(a) and (b) require a governmental body that wishes to withhold information from public disclosure to ask for a decision from the attorney general no later than the tenth business day after the date of receiving the written request. In this case, this office did not receive the request for a decision within the ten business day period mandated by section 552.301(a). The department received the request for information on November 9, 2000 but did not submit a request for a decision until December 6, 2000. Because the request for a decision was not timely received, the requested information is presumed to be public information. Gov’t Code § 552.302.

In order to overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Id.*; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ); *see* Open Records Decision No. 630 (1994). This office has held that a compelling reason exists to withhold information when the information is made confidential by another source of law or affects third party interests. *See* Open Records Decision No. 150 (1977). The applications of sections 552.101 and 552.117 are such compelling reasons.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses the doctrine of common law privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683.

This office has found that the following types of information are excepted from required public disclosure under constitutional or common law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990), information concerning the intimate relations between individuals and their family members, *see* Open Records Decision No. 470 (1987), and identities of victims of sexual harassment, *see Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied). We have marked the information that you must withhold under section 552.101 and common law privacy.

Next, you contend that some records are confidential under section 51.14 of the Family Code. Section 51.14(d) of the Family Code provides for the confidentiality of juvenile law enforcement records where the conduct occurred before January 1, 1996. The submitted internal affairs records are not juvenile law enforcement records contemplated by section 51.14(d). Therefore, section 51.14(d) is inapplicable.

Lastly, you assert that section 552.117 excepts some of the information from public disclosure. Section 552.117 excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the department may only withhold information under section 552.117 on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. For those employees who timely elected to keep their personal information confidential, the department must withhold the employees' home addresses and telephone numbers, social security numbers, and any information that reveals whether these employees have family members. The department may not withhold this information under section 552.117 for those employees who did not make a timely election to keep the information confidential.

The requested records also contain information that is excepted from disclosure under section 552.117(2). The department must withhold those portions of the records that reveal the officers' home addresses, home telephone numbers, social security numbers, and the officers' family member information. We have marked the information excepted under subsections 552.117(1) and (2). All other information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

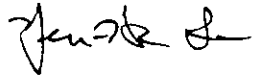
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss of the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'Yen-Ha Le', with a stylized flourish at the end.

Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/er

Ref: ID# 144161

Encl: Marked documents

cc: Mr. Dave Michaels, Staff Writer
The Dallas Morning News
Box 655237
Dallas, Texas 75265
(w/o enclosures)